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I hereby certify that the attached documents are being transmitted via facsimile transmission to the Assistant Commissioner for Patents of the United States Patent and Trademark Office, via facsimile number (703) 872-9306, on this 21st day of October, 2002.

Janet Rose
Attorney/Agent for Applicant
October 21, 2002
Date

Attorney Docket No. 1166

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Bruce et al. Date: October 21, 2002

Serial No.: 09/766,113 Group Art Unit: 1638

Filed: January 19, 2001 Examiner: E. McElwain

For: "Novel Root-Preferred Promoter Elements and Methods of Use"

Assistant Commissioner for Patents
Washington, D.C. 20231

RESPONSE TO RESTRICTION REQUIREMENT

This response is responsive to the Office Action mailed October 19, 2002.

Applicant elects with traverse the claims of Group I (claims 1-10) drawn to DNA promoter elements operably linked to a coding sequence, and expressly reserve the right to file divisional applications or take other such appropriate measures to protect the inventions in the remaining claims. No change of inventorship is required due to this election of Group I.

Under MPEP 803 the Examiner is requested to examine claims to independent or distinct inventions if the examination does not place an undue burden on the Examiner. It is submitted that the DNA promoters (promoter claims of Group I) and the DNA requiring expression (promoter element operably linked to a

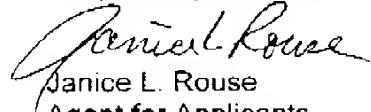
Serial No. 09/766,113
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coding sequence claims of Group II), are sufficiently closely related so as to be examined in one application, and as such, would not cause undue search nor burden the examiner. Further, and as determined by the Examiner, both groups I and II belong within class 536, and subclass 23.1. Likewise, the claims of Group III, drawn to the plant containing the DNA promoter (of Group I) are connected in design, operation and effect under the disclosure of the present application.

The MPEP 808.01 states that inventions are independent: "where they are not connected in design, operation, or effect *under the disclosure* of the particular application under consideration...." The disclosure of the present invention clearly connects the inventions of Groups I, II and III.

It is therefore submitted that Groups I, II, and III are sufficiently closely related to be combined without undue burden.

Respectfully submitted,


Janice L. Rouse
Agent for Applicants
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Janice L. Rouse

Attorney/Agent for Applicant
October 21, 2002

Date

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GROUP 1600

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FAX TRANSMISSION

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TO: Assistant Commissioner for Patents
FROM: Janice L. Rouse
RE: U. S. Patent Application No. 09/766,113; Attorney Docket No. 1166
DATE: October 21, 2002 FAX NUMBER: (703) 872-9306

NUMBER OF PAGE(S) FOLLOWING THIS SHEET: 2

COMMENTS:

Attached -

- **Response to Restriction Requirement / 2 pages**

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